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No. 03-288

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

BRONX LEGAL SERVICES and QUEENS LEGAL SERVICES,

Petitioners,

—v.—

LEGAL SERVICES CORPORATION, LEGAL SERVICES FOR NEW YORK CITY, and LEONARD KOCZUR, Acting Inspector General of the Legal Services Corporation,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF LEGAL SERVICES CORPORATION IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent Legal Services Corporation has no parent companies or non-wholly owned subsidiaries.

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STATEMENT OF THE CASE

This case is about Petitioners' refusal to provide information required by a valid administrative subpoena. That subpoena was ***not*** issued by Legal Services Corporation ("LSC"). Rather, it was issued by the Inspector General of LSC (the "Inspector General"), in connection with a congressionally mandated audit conducted by the Inspector General.

LSC is only in this case because it issued a proposed determination to suspend the funding it provides to Legal Services of New York ("LSNY") because of LSNY's failure to produce the information requested by the Inspector General. LSC's regulatory authority to issue the proposed determination is not at issue. Rather, the issue is the Inspector General's entitlement to the requested information. Accordingly, LSC will not address issues directed at Inspector General (such as the constitutionality of the Inspector General Act). Moreover, LSC will not burden the Court by repeating the Inspector General's statement of questions presented, statement of facts and legal arguments, but, rather, incorporates them by reference.

REASONS FOR DENYING THE WRIT

A. The Court of Appeals Correctly Rejected The Argument That There Is Any Conflict Between The Appropriations Act(s) and the LSC Act

Contrary to Petitioners' tortured attempt to manufacture a statutory conflict between the disclosure obligations of § 509(h) of the 1996 Appropriations Act and the LSC Act's mandate that LSC-funded lawyers provide services in a manner consistent with their professional responsibilities, the two provisions are perfectly consistent with one another.

The LSC Act provides that LSC-funded lawyers act in compliance with the Code of Professional Responsibility and the Canons of Ethics. App. 21a (42 U.S.C. § 2996(6)). This includes the obligation to comply with the rules governing the disclosure of client secrets, which, as it applies in this case, are embodied in the Disciplinary Rules of the Appellate Division of the New York. App. 23a-24a (22 N.Y.C.R.R. § 1200.19). That rule provides, in relevant part, that "a lawyer may reveal . . . [c]onfidences or secrets when permitted under disciplinary rules ***or required by law or court order***." (emphasis added). Thus, when a law requires disclosure, the lawyer making the disclosure does not violate the Code of Professional Responsibility. And, in turn such disclosure by a Legal Services-funded lawyer does not violate the LSC Act.

As the lower courts properly concluded, Section 509(h) of the Appropriations Act requires disclosure of the information sought by the Inspector General. Thus, such disclosure—required by law—does not compel the LSC-funded attorney providing the information to violate the Code of Professional Responsibility.

In short, there is no conflict between the LSC Act and the Appropriations Act. Petitioners' argument to the contrary, *i.e.*, that there is a conflict and that the LSC Act must be accorded primacy because there is no basis for finding that that in enacting section 509(h) of the 1996 Appropriations Act, Congress impliedly repealed section 2996(6) of the LSC Act, is built on a faulty premise. It is also wrong as a matter of statutory interpretation. If repeal by implication was relevant (which it is not), the plain text of section 509(h) makes clear that Congress knew that it was directing the disclosure of information that, absent the legislation, might be protected from dis-

closure under the LSC Act. Thus, section 509(h) states, in relevant part, that

> ***Notwithstanding*** Section 1006(b)(3) of the Legal Services Corporation Act 42 U.S.C. § 2996e(b)(3), financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, for each recipient, shall be made available to any auditor or monitor, including any Federal department or agency that is auditing or monitoring the activities of [LSC] or of the recipient . . . except for reports or records subject to the attorney-client privilege.

App. 22a (emphasis added). By expressly referencing the LSC Act's provision concerning the ethical and professional obligations of LSC-funded lawyers, the statute makes clear that Congress was aware that the information it was requiring to be disclosed in connection with audits of LSC (and LSC recipients) might implicate lawyers' obligations under the Code of Professional Responsibility. And the statute makes clear that, other than where disclosure would run afoul of the attorney-client privilege—which is not at issue here—the information is to be disclosed.

Thus, unlike *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978), this is not a case where the text of an appropriations bill was silent as to the possible conflict with another statute. Rather, Congress expressly recognized the existence of a statute that might be read to conflict with the disclosure requirement of the appropriations bill, and unequivocally stated that notwithstanding the earlier statute, the appropriations legislations was to control. Under such circumstances, the appropriations bill controls. *See, e.g., United States v. Dickerson*, 310 U.S. 554 (1940) (where appropriations bill stated that certain payments were not to be made, "notwithstand-

ing" provisions of earlier statute mandating payment, the appropriations bill controlled).

B. The Court of Appeals Correctly Rejected Petitioners' Constitutional Arguments

In affirming the district court's rejection of Petitioners' constitutional claims, the court of appeals correctly concluded those claims were "without merit." App. 4a.

First, Petitioners argue that if Section 509(h) requires client names to be produced along with problem codes, it violates the doctrine of separation of powers in that the legislative branch has usurped the judiciary's role of regulating attorneys. They are wrong. The disciplinary rule in question expressly recognizes that the legislature may pass a law requiring an attorney to disclose information that, but for the law, the attorney would be barred from disclosing as a client secret. See App. 23a-24a. And that very same rule expressly permits the attorney to comply with that law and produce the information, without violating the disciplinary rule. *Id.* Thus, the judiciary has recognized the right of the legislative branch to require production of client secrets. Accordingly, Congress has not interfered with nor encroached upon the courts' attempts to regulate the conduct of attorneys.

Petitioners' reliance on *Velazquez v. Legal Services Corporation*, 531 U.S. 545 (2001) is misplaced. *Velazquez* concerned Congress' ability to impose viewpoint-based limits on the arguments a lawyer could make on behalf of a client. This Court held that such limits intruded upon and interfered with the role of the courts in adjudicating cases. *Id.* at 545-546. No such limits are at issue here. The lower courts properly rejected Petitioners' separation of powers argument.

Second, Petitioners argue that by requiring the production of client names and problem codes in conjunction with the Inspector General's audit of a federal subsidy program, Section 509(h) violates the rights of indigent clients to consult with their attorneys. This argument fails as well, because it assumes a right that does not exist. In this regard, Petitioners' newfound reliance on the Sixth Amendment as the source of this purported right is entirely misplaced. That amendment is limited to criminal cases. The Legal Services program only provides fund for representations in civil cases. The Sixth Amendment has nothing to do with this case.

Neither does the First Amendment. This Court has never held that indigent litigants in civil cases have a constitutional right to an LSC-funded lawyer. The cases cited by Petitioners are irrelevant because they deal with private relationships. Even if the information at issue would be protected from disclosure in the latter context (a proposition which need not be decided here), a different result is mandated in the context of this case—a federally-funded legal services program where the relationship at issue is created by the federal subsidy and the information is sought to make sure that those funds are being expended on real clients actually receiving legal services. *Cf., St. Germain of Alaska Orthodox Catholic Church v. United States*, 840 F.2d 1087, 1094 (2d Cir. 1988) (enforcement of tax laws overrides religious associational interests).

Finally, the lower courts correctly rejected Petitioners' due process and equal protection arguments. The due process argument is simply a repackaging of the First Amendment claim, *i.e.*, that Section 509(h) interferes with an indigent client's right to associate with an LSC-funded lawyer. As explained in the preceding paragraph, no such right exists. Thus, no due process claim

exists either. The equal protection claim fails because indigence is not a suspect classification entitled to strict scrutiny. *See, e.g., Maher v. Roe,* 432 U.S. 464, 471 (1977). Petitioners attempt to avoid this result by arguing that the government's control over the court system somehow elevates indigence to a suspect classification. Again, they rely on cases in the criminal context. And again, Petitioners are wrong.

Whatever the case may be in the criminal context, this Court has rejected the argument that indigence is a suspect classification in cases involving claims of denial of access to the civil litigation system. Thus, in *Ortwein v. Schwab,* 410 U.S. 656 (1973) this Court upheld the constitutionality of a civil filing fee against a challenge that the fee violated the equal protection clause because it prevented an indigent person from challenging a reduction in his welfare benefits. In doing so, the Court held that indigence was not a suspect classification, and therefore applied a rational basis standard of review. *See also United States v. Kras,* 409 U.S. 434 (1973) (same with respect to refusal to waive bankruptcy filing fee). The lower courts correctly found that there was a rational basis for the Inspector General to have requested the information at issue. Nothing else was required. The due process and equal protection claims were properly rejected.

CONCLUSION

The issues raised in this petition are not novel. They do not present any conflict with prior rulings of this Court. They do not present any conflict with the decisions of other circuit courts of appeal. In short, there is no reason for this Court to grant the petition. The petition for a writ of certiorari should be denied.

Dated: New York, New York
October 22, 2003

Respectfully submitted,

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